IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 28671 of 2006(L)

PETITIONER:

B. MITHRAN, AGED 36 YEARS,
S/O.SHANKARAN, CHEMBHAN HOUSE,
POOVALAPPU STREET, THALASSERY,
KANNUR DISTRICT.

BY ADV. SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT
DEPARTMENT, THIRUVANANTHAPURAM.

2. THE SECRETARY, THALASSERY
MUNICIPALITY, THALASSERY.

3. THE THALASSERY MUNICIPALITY,
THALASSERY, REPRESENTED BY ITS SECRETARY.

R1 BY GOVT.PLEADER SRI.K.J.MOHAMMED ANSAR.
R2 & R3 BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.28671 OF 2006

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DATED THIS THE 20TH FEBRUARY, 2007

J U D G M E N T

Mr.I.V.Pramod takes notice on behalf of the Thalassery Municipality. Government Pleader takes notice on behalf of the 1st respondent-Government.

2. No counter affidavit has so far been filed by the Municipality. Mr.M.Sasindran, counsel for the petitioner invited my attention to my own judgment in O.P.No.4266 of 2007. According to him, the fact-situation in this case is identical to the one which obtained in O.P.No.4266 of 2007.

3. Obviously no notification under Section 4(1) of the Land Acquisition Act has been issued for acquiring any portion of the petitioner's property or for that matter any other property. The principles laid down by the Supreme Court in **Raju S. Jethmalani v. State of Maharashtra** [(2005) 11 SCC 222)] and by this Court in **Padmini v. State of Kerala** (1999 (3) KLT 465) will apply. Under these circumstances, Ext.P8 is quashed and there will be a direction to the Municipality to pass fresh orders after considering Ext.P2. Permit will be granted as applied for if the Municipality finds that the plan submitted by the petitioner is otherwise in order. In other words, the

pendency of the proposal to acquire property or the proposal to have a road constructed as per the Town Planning Scheme shall not be a reason for rejection of the permit. Orders as directed above will be passed at the earliest and at any rate within three weeks of receiving copy of this judgment It is made clear that the above directions need be complied with only upon the petitioner filing an affidavit before the Municipality undertaking to demolish the constructions made on the strength of the permit without raising any objections, if it becomes necessary for the Municipality to acquire the property within one year of the issuance of the permit for the purposes mentioned in the DTP Scheme. Even thereafter it will be open to the Municipality to acquire the property for any genuine public purpose, but the Municipality will then be under obligation to pay adequate compensation under the Land Acquisition Act.

The Writ Petition is disposed of as above. No costs.

(PIUS C. KURIAKOSE, JUDGE)

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